IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 889 OF 2004
WITH
APPEAL FROM ORDER NO. 890 OF 2004

Master Rahul Jairam Telreja ..Appellant

Vs.

Suresh Jairam Telreja and ors. ..Respondents

Mr. S.A. Savant for the appellant.
Mr. Rajiv Patil for Respondents.

CORAM: B.H. MARLAPALLE, J.

Date : June 27, 2005.

P.C.:

1. Heard Mr. Savant the learned counsel for the appellant and Mr. Patil the learned counsel for the respondents.

2. Misc. Application No.47 of 2002 has been filed under Order 33 Rule 1 of C.P.C. and the same is still pending before the learned Civil Judge, Senior Division at Kalyan. In the said application other two applications came to be filed at Exh.5 and Exh.6 and both these applications have been rejected by the learned Civil Judge, Senior Division at Kalyan vide

her orders dated 31/7/2004. In the first Appeal the order passed below Exh.6 has been challenged whereas in the second Appeal the order passed below Exh.5 has been challenged. Hence, both these appeals are being decided by this common order.

3. The pending proceedings have been initiated by the minor, namely, Rahul Jairam Telreja through his natural guardian and mother Mrs. Zita Veronic D'souza and by the application at Exh.5 an injunction was prayed for restraining the respondents from disposing any part of the suit property until further orders. Whereas in application at Exh.6 the prayer for appointment of Court Receiver was made. The respondents, therefore, in their replies have taken a plea that Mrs. Zita Veronic D'souza was not the wife of deceased Jairam Telreja and the said Jairam was married to Savitri from whom he had two sons and one daughter who are impleaded as respondents. Jairam died on 6/12/2001 at Ulhasnagar leaving behind moveable and immoveable properties which are in possession of the respondents as at present. The appellant has gone to the court below in the month of

April 2002 on the basis of his contentions that he is a biological son of deceased Jairam.

4. The trial court examined the prima facie evidence regarding the alleged marriage of Mrs. Zita Veronic D'souza with deceased Jairam Telreja and it recorded a finding that there was no prima facie proof in that regard. The appellant relied upon some documents like the Certificate of birth dated 11/8/1998 issued by the Brihanmumbai Mahanagarpalik and his admission record with Lourds Bal Bhavan school at Kalyan. The appellant had also placed on record a Certificate purportedly issued by Dr. L.M. Shah, Dr. Ajay L. Shah and Dr. Anjali A. Shah. These certificates along with the copy of a photograph of the appellant's birth day celebration which was attended by deceased Jairam would not be a prima facie evidence to show that the appellant is a biological son of deceased Jairam, noted the trial court. The original copies of these certificates have been placed before me along with the copy of a photograph and I do not see any reason to hold that the view taken by the trial court calls for interference at least at this

stage. Mrs. Zita Veronic D’souza has no documentary proof, at present, to show that she went through a wedding ceremony with deceased Jairam.

5. Mr. Savant the learned counsel for the appellant also submitted that during the trial of the pending proceedings before the court below, it would be possible for the appellant to prove that he is a biological son of deceased Jairam Telreja and in the meanwhile the respondents are directed to be restrained from alienating the suit property. At no point of time till the appellant approached this court was there any such order. By an order dated 24/11/2004 notice before admission was issued and at least for 10-12 different dates the matter appeared till 3/5/2005 and on the very next day i.e. 4/5/2005 this court (D.G. Deshpande,J.) passed the following order:-

> "S.O. after vacation. Until further orders not to create any third party interest in the suit property."

. By relying upon the above said order Mr. Savant prayed for continuation of its operation till the proceedings before the court below are decided.

6. On the face of the documentary evidence that was placed before the trial court, it is clear that the view taken by the trial court does not suffer from any error so as to entertain the prayer for an order of injunction restraining the respondents from creating any third party interest or for appointment of Court Receiver. However, it would be desirable that M.A. No.47 of 2002 is heard and decided by the court below on its own merits but within a fixed period.

7. In the result, both the appeals fail and they are hereby dismissed in limine. The ad-interim order passed on 4/5/2005 is hereby vacated. The trial court is directed to hear and decide the M.A. No.47 of 2002 on its own merits as expeditiously as possible and in any case before 31st August, 2005.

. Writ to go forthwith to the court below.

(B.H. Marlapalle,J.)